

FILED
Clerk of the Superior Court
JUN -2 7010
By: M. MASES, Deputy
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

v.

PETCO ANIMAL SUPPLIES, INC., a Delaware
Corporation doing business as PETCO stores,

Defendant.

Case No. 37-2010-00093302-CU-MC-CTL

FINAL JUDGMENT AND
PERMANENT INJUNCTION
PURSUANT TO STIPULATION

The People of the State of California, by and through their attorneys, JAN I.
GOLDSMITH, San Diego City Attorney, by MICHAEL RIVO, Deputy City Attorney; BONNIE
M. DUMANIS, San Diego County District Attorney, by GINA F. DARVAS, Deputy District
Attorney; STEVE COOLEY, Los Angeles County District Attorney, by LESLIE A. HANKE,
Deputy District Attorney; EDWARD S. BERBERIAN, JR., Marin County District Attorney, by
ROBERT E. NICHOLS, Deputy District Attorney; JAMES P. FOX, San Mateo County District
Attorney, by JOHN E. WILSON, Deputy District Attorney; and ANN BRAMSEN, Santa
Barbara County District Attorney, by B. ALLAN KAPLAN, Senior Deputy District Attorney;
and Defendant, PETCO ANIMAL SUPPLIES, INC., a Delaware corporation, by and through its
attorneys, Sheppard Mullin Richter & Hampton LLP, by ERIK S. BLISS, Esquire, having
stipulated that this Court has jurisdiction over this matter, and this Final Judgment and Permanent

1 Injunction Pursuant to Stipulation (Judgment) may be signed without the taking of proof, without
2 trial or adjudication of any issue of fact or law herein, and without the stipulation or Judgment
3 constituting evidence of an admission by Defendant;

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

5 **JURISDICTION**

6 1. This action is brought under California law and this Court has jurisdiction of its
7 subject matter and the parties.

8 **INJUNCTION**

9 2. The provisions of this Judgment are applicable to Defendant, PETCO ANIMAL
10 SUPPLIES, INC., a Delaware corporation ("Defendant"), and to its officers, directors,
11 employees, agents, and representatives acting within the course and scope of their agency and
12 employment, and to successors and assignees of Defendant, and to all persons, partnerships,
13 corporations, and other entities acting for, through, on behalf of, or in concert with Defendant,
14 with actual or constructive notice of this Judgment. All obligations imposed upon Defendant by
15 the terms of this Judgment are ordered pursuant to Business and Professions Code sections 17203
16 and 17535, except where provided otherwise.

17 3. Defendant, and all persons and entities set forth in Paragraph 2 above, are hereby
18 permanently enjoined and restrained from directly or indirectly:

19 A. Representing a price in an advertisement or on an item, store shelf or sign near
20 the item, and charging a greater price at the time the item is purchased;

21 B. Computing at the time of sale of an item a value which is more than the price
22 which is then advertised, posted or quoted, in violation of Business and Professions Code
23 section 12024.2;

24 C. Selling any commodity by gross weight or measure, in violation of Business
25 and Professions Code section 12023;

26 D. Failing to locate or position a weighing or measuring device used in retail trade
27 so that the indicators can be accurately read by purchasers under ordinary circumstances, in
28 violation of Business and Professions Code section 12510(a)(6);

1 E. Failing to comply with any provision of California's Pet Store Animal Care
2 Act as contained in the Health and Safety Code;

3 F. Failing to comply with Penal Code section 5971, including but not limited to
4 the following: providing proper heating, ventilation, sanitary conditions, and adequate nutrition
5 for and humane care and treatment of a pet animal under Defendant's control, and taking
6 reasonable care to release for sale only those pet animals that are free of disease or injuries.

7 4. Defendant, and all persons and entities set forth in Paragraph 2 above, are hereby
8 ordered to initiate and maintain, for a period of five years from the date of entry of this Stipulated
9 Final Judgment and Permanent Injunction, in every existing PETCO store in California and in
10 every future PETCO or other retail store operated by Defendant in California and before opening
11 for business, a program to maintain accurate shelf and scanner pricing and to correct inaccurate
12 shelf and scanner pricing. The program shall include, but not be limited to, the following:

13 A. Every store shall have at least one working portable price scanner for use in
14 conducting internal price audits;

15 B. Defendant shall designate its highest level executive committee who, with
16 assistance as needed, shall oversee Defendant's pricing accuracy program. This Committee shall
17 be known as the Pricing Accuracy Quality Assurance Executive Committee (PAQAEC) for its
18 California stores. Defendant shall develop and maintain a centralized Computerized Internal
19 Audit Form (CIAF) system memorializing each and every weekly, monthly and periodic internal
20 audit conducted in any and all of its California stores, which shall include all of the following
21 information:

22 (1) The name of each person conducting any portion of the inspection and
23 a personal ID number for the system known only to the employee;

24 (2) The date and time the inspection is completed;

25 (3) A detailed and accurate description, results, and corrective measures
26 necessary for each audit;

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1 C. Defendant shall utilize an external, third-party auditor (EA) for its California
2 stores. The EA shall conduct a monthly price audit in each California store of at least fifty
3 randomly selected items offered for sale in that store, including bulk sale and advertised sale
4 items. The results of these audits shall be forwarded to Defendant's Vice President of Internal
5 Audit and Loss Prevention;

6 D. Defendant shall designate an Inventory and Pricing Department Manager
7 (IPDM) in each store. The IPDM shall be responsible for pricing accuracy in the store, including
8 all price scanning issues. The IPDM shall also be responsible for verifying all prices in PETCO
9 advertisements. The IPDM shall be clearly identified by a name tag designation to PETCO
10 employees and to members of the public. In the absence of the IPDM, the store's manager on
11 duty shall perform the duties and obligations of the IPDM;

12 E. The IPDM, with the assistance of other PETCO employees as may be
13 necessary, shall conduct weekly price audits of at least thirty items offered for sale in each store,
14 including bulk sale and advertised sale items. At least twenty of the thirty items in each weekly
15 price audit shall be randomly selected. The twenty randomly selected items may be from a
16 department or other subset of the store's items offered for sale, so long as all departments are part
17 of the selection at least once every four weeks. Up to ten of the thirty items in each weekly price
18 audit may be targeted items selected by Defendant based on considerations such as a recent
19 advertisement, price change, regulatory inspection, or similar reason. None of the items audited in
20 a particular week shall be repeated in audits in any of the following three weeks;

21 F. Defendant shall create a log of each audit, which shall include the date and time
22 of the audit; the number of items audited; a list of pricing errors discovered during the audit,
23 including a description of the item, the correct price, the scanned price, and a certification that the
24 errors were corrected. Within two weeks of each audit, the IPDM or his or her designee shall
25 forward the audit log to the PAQAEC and Defendant's Vice President of Internal Audit and Loss
26 Prevention;

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1 G. Defendant shall retain all audit logs for at least five years at its National
2 Support Center;

3 H. Every pricing error discovered during an audit shall be promptly corrected. If,
4 in any audit, there are pricing errors for three or more items, that fact shall be conspicuously
5 noted on the audit log before it is forwarded to the designated PETCO employee. The PAQAEC
6 shall keep a separate log for each PETCO store in California, noting every audit in which there
7 were pricing errors for three or more items;

8 I. During any week where there are actively advertised items, the IPDM and/or a
9 store's manager on duty shall walk the store and conduct a random audit of at least thirty
10 advertised items to verify the accuracy of the price of these advertised items on the shelf. Every
11 pricing error discovered during the walk shall be promptly corrected;

12 J. Whenever an item has scanned at a price that is higher than the lowest shelf or
13 in-store advertised price, the customer shall receive a three dollar reduction from the lowest
14 advertised price for one of the items or, if the item's lowest shelf or in-store advertised price is
15 three dollars or less, the customer shall receive one such item for free. Defendant shall inform
16 customers of this policy by posting a sign in a location clearly visible to customers standing in the
17 checkout line at every checkout stand in every PETCO store in California. The signs shall be at
18 least six inches by six inches in size and shall state: "IF AN ITEM SCANS AT A PRICE
19 HIGHER THAN THE SHELF LABEL PRICE OR STORE SIGN PRICE, WE WILL CORRECT
20 THE ERROR AND DEDUCT \$3.00 FROM THE LOWEST IN-STORE PRICE OF ONE SUCH
21 ITEM. IF THE LOWEST IN-STORE PRICE IS \$3.00 OR LESS, YOU WILL RECEIVE ONE
22 SUCH ITEM FOR FREE;"

23 K. Defendant shall train every employee responsible for weighing items sold in
24 bulk in the placement and use of scales, including the deduction of tare, before the employee is
25 permitted to weigh any item sold by bulk weight for a customer. Defendant shall maintain a list
26 certifying that such training has taken place, including the date of the training, the name of the
27 trainer, and the employee trained. Defendant shall retain all bulk weighing training certification
28 lists for at least two years at its National Support Center;

1 L. Upon written request by any District Attorney, City Attorney, or regulatory
2 official in California, including the State of California Division of Measurement Standards,
3 County Sealer or Director of a County Department of Agriculture, or their respective designees,
4 the audit logs and bulk weighing training certification lists shall be made available for inspection
5 within two weeks from the date of the written request to the PAQAEC;

6 M. Nothing in this Injunction shall be a defense to an action by the People for a
7 violation of the Business and Professions Code and/or the Penal Code.

8 5. Pursuant to Business and Professions Code sections 17203 and 17535, Defendant, and
9 all persons and entities set forth in Paragraph 2 above, are hereby ordered to initiate and enforce,
10 for a period of five years from the date of entry of this Stipulated Final Judgment and Permanent
11 Injunction, a program to check the health condition and habitat of each pet animal kept or
12 maintained at each PETCO store in California (but specifically excluding insects) so as to assure
13 that each such animal has a sanitary and appropriately maintained habitat, adequate nutrition,
14 drink, and that said animals are free of disease or are receiving prompt and appropriate veterinary
15 care. This program shall include the following:

16 A. Defendant shall designate not less than one "executive"-level employee to be
17 responsible for all animals maintained in any and all California PETCO stores. Such person shall
18 have a substantial education and background in all aspects of animal care and welfare, including
19 grooming. This person shall be known as the California Animal Care Coordinator (CACC);

20 (1) The CACC shall develop training manuals and materials for each
21 species of animal under the care and control of Defendant at all of its retail stores in California,
22 including information about the care and wellness of all such animals. Defendant shall review and
23 update all training manuals and materials on a yearly basis;

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1 (2) The CACC shall develop and maintain in all California stores customer
2 information materials for each animal species sold, including the general habitat, feeding, care,
3 and medical information, which will be reviewed and approved by a veterinarian. Defendant shall
4 make the information materials available to each purchaser of an animal from via an Animal Care
5 Sheet or online at www.petco.com;

6 (3) The CACC or his or her designee shall receive all complaints relating
7 to the care and welfare of animals within twenty-four hours of receipt from (a) any animal
8 welfare or regulatory agency, (b) any employee via Defendant's Hotline, or (c) any consumer,
9 and shall investigate and address the complaint within forty-eight hours;

10 B. Each PETCO store in California shall designate an employee who is
11 specifically responsible for the oversight of animal care and welfare (referred to herein, but not
12 necessarily to be titled, the Companion Animal Department Manager (CADM)). Every such
13 designated employee shall be trained on all species of animals maintained in the store, and the
14 employee and trainer/instructor shall certify that such training was successfully completed;

15 C. Each PETCO store in California shall provide companion animal care training
16 to all current and newly-hired sales associates (excluding grooming associates), and the store
17 manager or other designated employee shall certify that such training course has been
18 successfully completed within sixty days (or eight weeks) of the associate beginning work at the
19 store. Such training shall relate to all animal species maintained at the store where the associate is
20 employed and include all aspects of the proper care of each animal species, as well as information
21 necessary to answer questions from consumers interested in the purchase of such animals.
22 Employees not so trained shall not principally care for animals at any PETCO store, or sell
23 animals without first reviewing the appropriate Care Sheet and providing a copy of the Care Sheet
24 to the customer, or obtaining the assistance of a trained associate;

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1 D. Each PETCO store in California shall require all animals and habitats be
2 inspected every morning within one hour of opening (or by noon on a holiday) by a trained
3 animal care employee. The inspections shall be completed and documented in a computerized
4 system. Each employee conducting an inspection shall certify that the inspection has been
5 conducted;

6 E. All animals and habitats shall be inspected every four hours and cleaned and
7 refreshed as needed;

8 F. Defendant shall develop and maintain a centralized Computerized Daily
9 Inspection Record (CDIR), memorializing each morning inspection which shall include all of the
10 following information:

11 (1) The county, address and store code of each store;

12 (2) The name of each person conducting any portion of the inspection.

13 Each person conducting any portion of the inspection must have an individual personal ID
14 number known only to the employee for the system;

15 (3) The date and time the inspection is completed;

16 (4) The CDIR shall either acknowledge that each animal is contained in a
17 sanitary facility of appropriate size, with proper heating and ventilation for the animal(s)
18 contained therein and that the animal has proper nourishment and water, or the need for
19 immediate action/correction;

20 (5) The CDIR shall either acknowledge that each pet animal has or has not
21 been provided proper nutrition and water or the need for immediate food and/or water;

22 (6) The CDIR shall either acknowledge each of the pet animals has been
23 examined and showed no observable symptoms of sickness, injury or disease; or if such
24 symptoms are observed, that the animal was removed from the sales floor. Any treatment or other
25 action taken for the health and well being of the animal shall be noted on the CDIR;

26 (7) The CDIR may be divided by animal species or department so as to
27 permit the reasonable progress of the inspection. (As used herein, the phrase, "animal species or
28 department," refers to groupings or types of animals which are generally located in the same area

1 and have substantially similar care needs, such as fish, reptiles, terrestrial invertebrates, small
2 animals (for example, mice, rats, hamsters, and gerbils), and larger animals (for example, dogs
3 and cats.) Defendant shall only allow trained and certified employees to access species or
4 department reports on animals they have been trained to care for;

5 G. Defendant's CDIR system shall generate "exception" reports, in the event that
6 any PETCO store fails to fully complete the daily inspection report within one hour of opening, or
7 by noon on a holiday. The CACC or designee shall receive, review, and take immediate action to
8 correct any problem (herein referred to as an "exception") shown by data from the CDIR as
9 follows:

10 (1) The CDIR system shall generate a report to the CADM and the store
11 manager notifying them to take prompt action in response to any failure to complete an
12 "exception" report;

13 (2) The CDIR system shall notify the CADM and the store manager if the
14 CDIR has not been completed within one hour of opening or by noon on a holiday;

15 (3) The CADM or the store manager shall cause a certified employee to
16 complete a CDIR not later than two hours after opening that day or by 2:00 p.m. on a holiday;

17 (4) The CADM or the store manager shall complete an "exception"
18 response acknowledging that the CDIR has been completed and shall verify the completion and
19 contents of the CDIR;

20 H. The CDIR system shall automatically notify the CACC if:

21 (1) The CADM or the store manager has not completed an "exception
22 response" report no later than two hours after opening that day or by 2:00 p.m. on a holiday;

23 (2) The CDIR has not been completed on more than two occasions in any
24 thirty-day period;

25 (3) Any animal is noted to be in a need of veterinary care;

26 I. That CACC shall receive, review, and take immediate action to correct any
27 problem shown by data from the CDIR including, but not limited to, the following:

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1 (1) The CACC and/or his or her designate shall promptly contact any store
2 manager upon receipt of notification from the CDIR if an inspection has not been completed
3 within two hours of opening or by 2:00 p.m. on a holiday;

4 (2) The CACC shall cause a prompt inspection of the health of the animals
5 at the store if either:

6 a. The CDIR is late on more than two occasions in any
7 thirty-day period;

8 b. Any animal is noted to be in a need of veterinary care;

9 J. Defendant shall maintain copies of the CDIR for each store in a central database
10 located at its National Support Center. Upon written request, Defendant shall make said CDIRs
11 available to any Peace Officer, District Attorney, City Attorney, Humane Society, Animal
12 Control Official, or their respective designees, within two weeks of such request to the National
13 Support Center;

14 K. The CADM or the store manager shall take prompt action in response to any
15 habitat sanitation deficiency, any lack of animal nutrition or water, or any animal showing signs
16 of sickness, injury or disease, and shall note the date and action taken in a computerized
17 "exception" report;

18 L. Defendant shall create and implement a program that includes the proper
19 treatment for any and all animals (meaning any warm-blooded animals, or reptiles, or
20 amphibians) that appear ill, diseased, injured, or in discomfort;

21 (1) Any animal found to be diseased, ill, or injured shall be evaluated and
22 treated without delay. If necessary, for the humane care and treatment of the animal, the animal
23 shall be provided with veterinary care without delay;

24 (2) Any animal that is ill, injured or contagious shall not be sold or offered
25 for sale until a licensed veterinarian approves the animal for sale;

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1 (3) Any animal that is found to be or appears ill, diseased, injured or in
2 discomfort shall be immediately removed from the general population and housed separately in a
3 wellness or isolation habitat that is separated from the store's primary animal enclosures and
4 grooming areas. Any animal food kept in the same room as this habitat shall be in sealed
5 containers. The isolation area shall be cleaned and maintained at least once per day;

6 (4) Each PETCO store shall maintain computerized records documenting
7 all sick, injured, or diseased animals, including the name of the employee who discovered the
8 animal, the date and time the condition was discovered, the date and time the animal was
9 removed from the general habitat, the date and time a veterinarian was contacted, the name of the
10 veterinarian and any care instructions received, the date and time the animal was taken to the
11 veterinarian, and the diagnosis and treatment instructions (if a veterinary visit was made). The
12 same information shall be generated into the form of an Animal Status Card and placed in a
13 secure, visible and accessible location with each animal placed into isolation;

14 (5) Upon written request, each PETCO store shall provide access to these
15 records in each store and Defendant shall make said reports available to any Peace Officer,
16 District Attorney, City Attorney, Humane Society, Animal Control Official, or their respective
17 designee, within two weeks of such request;

18 (6) The CACC or his or her designee shall review all Animal Status Cards
19 to assure that sick, injured or diseased animals are receiving proper care;

20 (7) If there is a determination that any animal (excluding fish) not intended
21 as food for another animal may require euthanasia, veterinary treatment shall be provided without
22 delay;

23 M. An animal intended as food for another animal may only be destroyed using
24 methods as set forth in the Pet Store Animal Care Act as contained in the Health and Safety Code.
25 These policies and procedures shall be included in the animal training provided to animal and
26 store managers. Euthanasia may only be carried out by the CADM or the store manager. Failure
27 to follow such policies and procedures shall result in the immediate dismissal of any employee
28 who violates such policies and procedures;

1 N. Defendant shall create and implement a program requiring all PETCO
2 grooming salon managers to have a minimum of three years experience in grooming, or receive
3 formal instruction from a reputable grooming school, or completion of Defendant's internal
4 training program. All Pet Stylists shall have a minimum of one year experience in grooming, or
5 shall receive formal instruction from a reputable grooming school, or shall complete PETCO's
6 internal training program. Grooming Assistants shall complete continuous on-the-job training by
7 a Pet Stylist or Grooming Salon Manager;

8 O. All experienced groomers hired by Defendant shall complete a technical
9 evaluation conducted by a current Grooming Salon Manager to determine their starting position;

10 P. All grooming areas must be separated from the store's primary animal
11 enclosures, animal food storage areas, and isolation areas for housing sick animals. The grooming
12 area and grooming implements shall be cleaned and maintained at least once daily;

13 Q. The CACC shall create a program and conduct independent random
14 audits to ensure proper adherence to the Pet Store Animal Care Act and Defendant's animal care
15 policies. Each PETCO store in California shall be audited at least once each year by a neutral and
16 objective third party to ensure such compliance.

17 6. If at any time PETCO makes a substantial change to its business, or pricing or animal
18 care operations, such that some or all of the provisions of this Stipulated Final Judgment and
19 Permanent Injunction, including without limitation the programs set forth in Paragraphs 4 and 5
20 above, are no longer necessary or prudent to serve the public interest in pricing accuracy or
21 animal care, PETCO may petition the Court for the modification or termination of such
22 provisions;

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1 **MONETARY RELIEF**

2 7. Pursuant to Business and Professions Code sections 17206 and 17536, Defendant shall,
3 on the date of the filing of this Judgment, pay to Plaintiff the sum of One Million, Six Hundred
4 Seventy Four Thousand, Five Hundred Sixty Two Dollars (\$1,674,562.00) in the form of one
5 certified check payable to the Marin County District Attorney. The check shall be divided equally
6 among the offices of the six prosecutors bringing this action.

7 8. Pursuant to Business and Professions Code sections 17206 and 17536, Defendant
8 shall, on the date of the filing of this Judgment, pay consumer agency costs totaling Seventy Five
9 Thousand Four, Hundred and Thirty Eight Dollars (\$75,438.00) in the form of one certified check
10 payable to the Marin County District Attorney to be distributed as follows:

11	<u>Agency</u>	<u>Amount</u>
12	California Division of Measurement Standards	\$14,132.65
13	Marin County Humane Society	\$ 4,072.80
14	Weights and Measures	
15	Butte County	\$ 210.90
16	Weights and Measures	
17	Fresno County	\$ 253.60
18	Weights and Measures	
19	Humboldt County	\$ 378.11
20	Weights and Measures	
21	Kern County	\$ 410.64
22	Weights and Measures	
23	Los Angeles County	\$17,018.60
24	Weights and Measures	
25	Marin County	\$ 1,561.60
26	Weights and Measures	
27	Orange County	\$ 1,134.00
28	Weights and Measures	
	Riverside County	\$ 3,569.00

1	Weights and Measures	
2	San Bernardino County	\$ 3,281.25
3	Weights and Measures	
4	San Diego County	\$13,716.12
5	Weights and Measures	
6	San Francisco County	\$ 420.00
7	Weights and Measures	
8	San Joaquin County	\$ 323.32
9	Weights and Measures	
10	San Luis Obispo County	\$ 171.88
11	Weights and Measures	
12	San Mateo County	\$ 1,201.34
13	Weights and Measures	
14	Santa Barbara County	\$ 612.00
15	Weights and Measures	
16	Santa Clara County	\$ 8,597.02
17	Weights and Measures	
18	Solano County	\$ 2,148.30
19	Weights and Measures	
20	Sonoma County	\$ 255.00
21	Weights and Measures	
22	Stanislaus County	\$ 342.40
23	Weights and Measures	
24	Sutter County	\$ 467.47
25	Weights and Measures	
26	Tulare County	\$ 92.00
27	Weights and Measures	
28	Ventura County	\$ 1,068.00

9. The two checks shall be delivered to the attention of Robert E. Nichols, Deputy District Attorney, Marin County District Attorney's Office, Consumer and Environmental Protection Unit, 3501 Civic Center Drive, Room 130, San Rafael, California 94903.

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RETENTION OF JURISDICTION

10. Jurisdiction is retained for the purpose of enabling any party to this Judgment to apply to the Court at any time for such further orders and directions as may be necessary and appropriate for the construction or carrying out of this Judgment, for the modification of any of its injunctive provisions, and for the enforcement of, compliance with, and for the punishment of violations of the Judgment.

11. The clerk is directed to immediately enter this Judgment.

Dated: JUN - 2 2010

RICHARD S. WHITNEY
Judge of the Superior Court